

172807

MCNAIR LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW

www.mcnaire.net

BANK OF AMERICA TOWER
1301 GERVAIS STREET, 17th FLOOR
COLUMBIA, SOUTH CAROLINA 29201

POST OFFICE BOX 11390
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE (803)799-9800
FACSIMILE (803)376-2277

February 18, 2005

VIA HAND DELIVERY

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

RECEIVED
2005 FEB 18 PM 4:23
SC PUBLIC SERVICE
COMMISSION

Re: Petition of Chesnee Telephone Company to Require KMC to Enter Into Appropriate Arrangements with Chesnee to Handle Traffic Between the Two Companies or, Alternatively, For a Rule to Show Cause as to Why the Certificates of Public Convenience and Necessity of KMC Telecom III, KMC TelecomV, and KMC Telecom Data Should Not Be Revoked

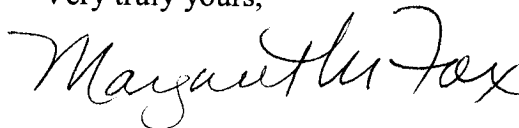
Dear Mr. Terreni:

Enclosed for filing on behalf of Chesnee Telephone Company, please find an original and ten (10) copies of a Petition for Relief in the above-captioned matter. By copy of this letter and Certificate of Service, all parties of record are being served with a copy of this Petition via U. S. Mail.

Please clock in a copy and return it with our courier.

Thank you for your assistance.

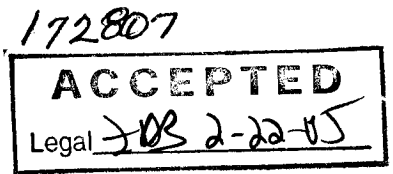
Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosures

cc: Parties of Record



BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2005-30-C

RECEIVED
2005 FEB 18 PM 4:23
SC PUBLIC SERVICE
COMMISSION

IN RE: Petition of Chesnee Telephone Company)
 To Require KMC to Enter Into Appropriate)
 Arrangements with Chesnee to Handle Traffic)
 Between the Two Companies or, Alternatively,)
 For a Rule to Show Cause as to Why the)
 Certificates of Public Convenience and)
 Necessity of KMC Telecom III, KMC)
 Telcom V, and KMC Data Should Not)
 Be Revoked)

PETITION FOR RELIEF

Chesnee Telephone Company ("Chesnee") respectfully submits the within Petition for Relief. Chesnee requests that the Public Service Commission of South Carolina ("Commission") inquire into this matter and require KMC Telecom III, Inc. ("KMC III"), KMC Telecom V, Inc. ("KMC V") and KMC Data, LLC ("KMC Data") (collectively referred to as "KMC") to immediately enter into appropriate arrangements with Chesnee to handle traffic between the two companies or, alternatively, to show cause as to why its Certificates of Public Convenience and Necessity should not be revoked. In support of its Petition, Chesnee would respectfully show unto this honorable Commission:

1. Chesnee is an incumbent local exchange telephone company organized and doing business under the laws of the State of South Carolina. Chesnee is a rural telephone company as that term is defined in 47 U.S.C. § 153(37), and a small local exchange carrier as that term is

defined in S.C. Code Ann. § 58-9-10(14). Chesnee serves approximately 5,500 access lines in a rural service area that straddles the border between Spartanburg and Cherokee Counties in the upstate region of South Carolina.

2. KMC is a competitive local exchange carrier. On information and belief, KMC III, KMC V, and KMC Data are all wholly-owned subsidiaries of KMC Telecom Holdings, Inc., and each of the subsidiaries has been issued a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services in the State of South Carolina. See Commission Order No. 97-149, dated February 24, 1997, in Docket No. 96-337-C (granting KMC Telecom, Inc., a Certificate of Public Convenience and Necessity to provide local exchange services, interexchange services, and switched and special access services in South Carolina); Commission Order No. 1999-280, dated April 14, 1999, in Docket No. 1999-087-C (assigning KMC Telecom, Inc.'s certificate to KMC III); Commission Order No. 2001-297, dated April 30, 2001, in Docket No. 2001-17-C (granting KMC V a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services in South Carolina); Commission Order No. 2001-708, dated August 7, 2001, in Docket No. 2001-132-C (granting KMC Data a Certificate of Public Convenience and Necessity to provide local exchange and interexchange telecommunications services in South Carolina).

3. Both Chesnee and KMC are telephone utilities, as that term is defined in S.C. Code Ann. § 58-9-10(6), and are regulated by the Commission. Every telephone utility operating in the State of South Carolina is required to “provide and maintain facilities and equipment to furnish reasonably adequate and efficient telephone service to its customers in this

State.” S.C. Code Ann. § 58-9-260. The Commission also has jurisdiction pursuant to S.C. Code Ann. § 58-3-170 to “supervise and fix all agreements, contracts, rates or the divisions thereof and rules and regulations between and among common carriers and telephone and telegraph companies, of whatever kind, placed under the control or supervision of the Commission.”

4. On May 28, 2004, Chesnee sent a letter to a number of telecommunications carriers, including KMC. In the letter, Chesnee explained that it had recently completed a review of Spartanburg central office codes that can be dialed as seven-digit Extended Area Service (“EAS”) from Chesnee, and had identified certain NPA/NXX codes that were incorrectly included in Chesnee’s EAS calling scope in the absence of appropriate interconnection network and contractual arrangements. Pursuant to Chesnee’s General Subscriber Services Tariff, calls between Chesnee and Spartanburg are only considered to be EAS calls if they are voice calls and if the called party’s telecommunications carrier has entered into an appropriate arrangement with Chesnee to handle the calls as EAS calls.

5. In the May 28 letter, Chesnee notified KMC that, if KMC wanted calls to KMC’s Spartanburg customers to remain available on a seven-digit dialed basis, KMC must contact Chesnee to discuss appropriate network and contractual arrangements. The letter stated that if KMC did not enter into appropriate network and contractual arrangements, beginning August 1, 2004, seven-digit dialing capability to the affected codes would no longer be available at Chesnee’s end office.

6. Chesnee received no response from KMC as a result of the May 28 letter. On July 2, 2004, a follow-up letter was sent to KMC. KMC contacted Chesnee on or around July 8,

2004, and KMC's representative and a consultant employed by Chesnee had two telephone conversations about the situation. Chesnee's consultant explained the situation, and KMC's representative stated he did not understand the need for an agreement. Chesnee's consultant sent a draft agreement to KMC on August 2, 2004, with a follow up email on August 9, 2004.

7. KMC did not enter into meaningful negotiations with Chesnee. However, because negotiations with other carriers were still in progress in July 2004, Chesnee decided to extend the timeframe for ceasing local seven-digit dialing until September 1 in order to give its customers adequate notice, and because Chesnee had either resolved or was close to resolving appropriate network and interconnection arrangements with many of the carriers it had notified in its May 28 letter. Chesnee subsequently was able to reach terms with a number of the carriers it contacted by its May 28 letter.

8. On August 1, 2004, Chesnee notified its customers that, effective September 1, 2004, calls to certain Spartanburg-area numbers would not be accessible via local seven-digit dialing. Chesnee explained that these numbers were assigned to alternative telephone companies or mobile (wireless) service providers that had not established the necessary network and interconnection arrangements with Chesnee.

9. Beginning September 1, 2004, customers dialing numbers within KMC's affected codes received an intercept message informing them that the number they had dialed could no longer be reached as a local call, that they must first dial a "1" and then the 10-digit number, and that they would incur long-distance toll charge when dialing the 1+ number. After a month of silence, KMC called Chesnee on September 2, 2004, again questioning the need for an agreement and asking for another copy of the agreement previously sent to KMC. On

September 3, 2004, Chesnee determined to allow the calls to go through as seven-digit dialed local calls, on a temporary basis, in order to give KMC additional time to enter into an appropriate arrangement with Chesnee. This action was taken in good faith by Chesnee and in the best interest of its customers to try to resolve this situation.

10. Since that time, Chesnee has attempted to negotiate with KMC. Chesnee has continued to act in good faith in attempting to negotiate an agreement with KMC, and has continued to allow calls from Chesnee to KMC customers to go through as seven-digit dialed local calls pending resolution of the matter with KMC. During the course of negotiations, KMC requested three months of traffic data. When Chesnee provided the data showing that over 1,000,000 minutes of use per month were being sent by Chesnee to KMC, Chesnee proposed that the high volume of traffic made it necessary for the parties to establish a direct connection agreement in lieu of the earlier-proposed *de minimis* agreement. The agreement originally proposed to KMC assumed that the level of traffic being sent to KMC was *de minimis*, but provided that the parties would establish a direct connection in the event the traffic exceeded a specified number of minutes per month.

11. Chesnee provided a new proposed agreement to KMC on January 10, 2005. Chesnee has attempted to follow up to determine the status of the proposed agreement, but KMC representatives have stated only that someone will get back to Chesnee. The agreement proposed by Chesnee is fair and reasonable.

12. Chesnee continues to send over 1,000,000 minutes per month of traffic destined for KMC customers with Spartanburg numbers. The impact of this volume of traffic on a small, rural telephone company like Chesnee is tremendous. It is incumbent upon KMC to enter into

an appropriate arrangement with Chesnee to ensure the proper treatment of these calls as local calls. An agreement is necessary so that the parties can provide for the necessary facilities to carry traffic between Chesnee and KMC.

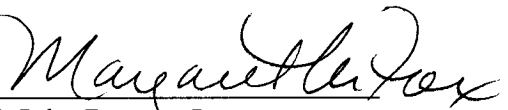
13. Chesnee believes that KMC's refusal to enter into appropriate arrangements with Chesnee is unreasonable, and adversely affects Chesnee's customers and Chesnee, because it places the cost burden on Chesnee and its customers alone with no portion of the cost of calls and facilities between Chesnee and KMC customers being borne by KMC or its customers.

14. In addition to being against the public interest, KMC's refusal to enter into appropriate arrangements with Chesnee to ensure adequate facilities to furnish reasonably adequate and efficient telephone service to customers in South Carolina effectively violates the provisions of S.C. Code Ann. § 58-9-260. Therefore, it is appropriate for the Commission to either (1) require KMC to immediately enter into the agreement proposed by Chesnee to handle traffic between the two companies; or (2) require KMC to show cause why its Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in South Carolina should not be revoked.

15. If Chesnee is not granted the immediate relief sought in this petition, it will have no choice but to treat calls to KMC's affected codes as toll calls and to rate them accordingly. Treating calls to KMC's affected codes as toll calls would be appropriate, because KMC has not entered into an appropriate arrangement with Chesnee to treat the calls otherwise. Chesnee simply cannot continue to treat KMC-bound traffic as local traffic, in the absence of an agreement with KMC regarding the appropriate arrangements for handling such traffic.

WHEREFORE, Chesnee Telephone Company submits that KMC's actions are contrary to the public interest and in violation of applicable law, and respectfully requests that this honorable Commission: (1) require KMC to immediately enter into the agreement proposed by Chesnee to handle traffic between the two companies; or (2) require KMC to show cause why its Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in South Carolina should not be revoked; and (3) grant such other and further relief as is just and proper.

Respectfully submitted,

By: 

M. John Bowen, Jr.
Margaret M. Fox
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Telephone: (803) 799-9800
Facsimile: (803) 753-3219
Email: jbowen@mcnair.net;
pfox@mcnair.net

ATTORNEYS FOR CHESNEE
TELEPHONE COMPANY

Columbia, South Carolina

February 18, 2005

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. _____

IN RE: Petition of Chesnee Telephone Company)
 To Require KMC to Enter Into Appropriate)
 Arrangements with Chesnee to Handle Traffic)
 Between the Two Companies or, Alternatively,)
 For a Rule to Show Cause as to Why the)
 Certificates of Public Convenience and)
 Necessity of KMC Telecom III, KMC)
 Telcom V, and KMC Data Should Not)
 Be Revoked)

**CERTIFICATE
OF SERVICE**

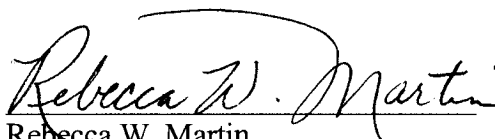
RECEIVED
2005 FEB 18 PM 4:24
SC PUBLIC SERVICE
COMMISSION

I, Rebecca W. Martin, Secretary for McNair Law Firm, P. A., do hereby certify that I have this date served one (1) copy of the attached Petition for Relief in the above-referenced matter on the following parties of record by causing said copy to be deposited with the United States Mail, first class postage prepaid, affixed thereto and addressed as follows:

C T Corporation System
75 Beattie Place
Greenville, South Carolina 29601

Michael Duke
KMC Telecom, III, LLC
1755 North Brown Road
Lawrenceville, Georgia 30043

Florence P. Belser, Esquire
South Carolina Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211


Rebecca W. Martin
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina
(803) 799-9800

February 18, 2005

Columbia, South Carolina